THE MAMLATDARS' COURTS ACT, 1906.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Local extent.
2. Repeal of Bom. Act III of 1876.
3. Interpretation.
4. Power to appoint Joint Mamlatdar.
   Power of Mamlatdar to transfer suits to the Joint Mamlatdar.
   Delegation of powers to Commissioner.
5. Powers of Mamlatdars' Courts.
   Power to issue injunction.
   Suits to be filed within six months.
   Cause of action.
6. Power of Collector to transfer suits.
7. Suits commenced by plaint.
   Contents of plaint.
8. Informal petitions to be treated as plaints.
9. Examination of plaintiff on oath.
10. Plaint to be subscribed and verified.
11. Endorsement by Mamlatdar.
    Procedure where plaintiff cannot write.
12. Rejection of plaint.
13. Return of plaint.
14. Procedure where plaint admissible.
15. Attendance of witnesses.
16. Where plaintiff makes default, plaint to be rejected with costs.
    Where defendant does not appear, case to be heard *ex parte*.
    But case may be reheard on sufficient cause being shown or plaintiff may withdraw his suit.
17. When proceedings may be adjourned.
18. Minor may be a party.
    Power to add parties.
    Procedure in case of death of party.
19. Points to be decided by Mamlatdar at hearing.
    Power of Mamlatdar to examine other witnesses and inspect property in dispute.
    Record of proceedings by Mamlatdar.
    Orders to be passed by Mamlatdar upon decisions in favour of plaintiff and defendant.
20. Mamlatdar's order to be endorsed on plaint and read out in open Court.
21. Mamlatdar's decision how executed.
    Proviso as to growing crops.
    Mode of serving injunction.
    Recovery of costs awarded.
    Disobedience to an injunction how punishable.

SECTIONS.

22. Possession to be given without prejudice to rights of parties.

23. Bar of appeal.
Collector's power to revise Mamlatdar's proceedings.
Delegation of Collector's powers.
Collector deemed to be a Court.

24. [*Omitted.*]

25. Punishment for verification of false plaint.

26. Bar of certain suits.

SCHEDULE A.

SCHEDULE B

SCHEDULE BB.

SCHEDULE C.

BOMBAY ACT No. II OF 1906.[1]

[THE MAMLATDARS' COURTS ACT, 1906.]

[*29th October 1906*]

Amended by Bom. 7 of 1926 (when notified).
" " " 11 of 1928.
Adapted and modified by the Adaptation of Indian Laws Order in Council.
*Amended by Bom. 24 of 1942.
Adapted and modified by the Adaptation of Laws Order, 1950.
Amended by Bom. 66 of 1954.

An Act to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts.

WHEREAS it is expedient to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts; It is hereby enacted as follows :— Preamble.

1. (*1*) This Act may be called the Mamlatdars' Courts Act, 1906. Short title.

(*2*) It shall extend to the whole of the Bombay Presidency, except the City Bombay. [2]* * Local extent.

2. The Mamlatdars' Courts Act, 1876, is hereby repealed. Repeal of Bom Act III of 1876.

3. In this Act, unless there is anything repugnant in the subject or context, Interpretation.

(*a*) the word " Mamlatdar " shall include any Revenue-officer exercising for the time being the powers of a Mamlatdar, of a Mukhtyarkar, or of a Mahalkari, and any other person who may be specially authorized by the [3][[4][State] Government] to exercise the powers of a Mamlatdar under this Act ; and

(*b*) the words " plaintiff " and " defendant " shall include

(*i*) a pleader duly appointed to act on behalf of such plaintiff or defendant, and

(*ii*) the recognized agent of a plaintiff or defendant as defined in section 37 of the [5]Code of Civil Procedure.

4. (*1*) The [3][[4][State] Government] may, by notification in the [6][*Official Gazette*], appoint in any taluka a Joint Mamlatdar under this Act who shall be invested with co-extensive powers and a concurrent jurisdiction with the Mamlatdar, except that he shall dispose of such suits only as he may receive from the Mamlatdar. Power to appoint Joint Mamlatdar.

(*2*) The Mamlatdar is hereby empowered to transfer to the Joint Mamlatdar for disposal any suit under this Act the plaint in which has been presented to the Mamlatdar under section 7, and to re-transfer to his own file any such suit, of which the Joint Mamlatdar is, owing to death, sickness or any other cause unable to dispose. Power of Mamlatdar to transfer suits to the Joint Mamlatdar.

(*3*) The [3][[4][State] Government] may delegate [7][its] powers under sub-section (*1*) to the Commissioner. Delegation of powers to Commissioner.

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* This Act was repealed and section 2 thereof was re-enacted by Bom. 42 of 1947, s. 2.

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette* 1905, Pt. VII, p. 520 ; for Report of Select Committee, *see ibid.*, p 1906, Pt. VII, p. 5 ; and for Proceedings in Council, *see ibid.*, 1905, Pt. VII, p. 578 ; *ibid.*, 1906 ; Pt. VII, pp. 31 and 189.

[2] The words " and Aden " were omitted by the Adaptation of Indian Laws Order in Counci

[3] The words " Provincial Government " were substituted for the words " Governor in Council ", *ibid.*

[4] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

[5] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908).

[6] The words " *Official Gazette* " were substituted for the words " *Bombay Government Gazette* " by the Adaptation of Indian Laws Order in Council.

[7] The word " its " was substituted for the word " his ", *ibid.*

Powers of Mamlatdars' Courts.

5. (*1*) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [1][fixed by the State Government,—

(*a*) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon ;

(*b*) to give immediate possession.] of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh [2][to remove or cause to be removed any such impediment or], to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

Power to issue injunction.

(*2*) The said Court shall also, subject to the same provisions, have power within the said limits, [3][where any impediment referred to in sub-section (*1*) is erected, or an attempt has been made to erect it, or], when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person [4][erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain [5][from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction.

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[1] These words, brackets and letters were substituted for the words " fixed by the State Government to give immediate possess on " by Bom. 66 of 1954, s. 2 (*1*) (*i*).

[2] These words were inserted, *ibid.*, s. 2 (*1*) (*ii*).

[3] These words, brackets and figures were inserted, *ibid*, s. 2 (*2*) (*a*).

[4] These words were inserted *ibid.*, s. 2 (*2*) (*b*).

[5] These words were inserted *ibid.*, s. 2 (*2*) (*c*).

(*2*) The Court of Wards may, with the sanction of the [1][[2][State] Government], at any time withdraw its superintendence from the person or property, or both, of a Government ward, and shall withdraw its superintendence as soon as, in the opinion of the District Court, certified to the Court of Wards,

(*a*) in the case of a person disqualified under clause (*a*) of sub-section (*1*) of section 5, he attains or has attained his majority ;

(*b*) in the case of a female disqualified under clause (*b*) of the same sub-section, she is fit to manage her own property ;

(*c*) in the case of a person disqualified under clause (*c*) of the same sub-section, he is fit to manage his own property ;

(*d*) in the case of a person disqualified under clause (*d*) of the same sub-section, he ceases to be of unsound mind and incapable of managing his affairs ; and

(*e*) where it was assumed under section 4, sub-section (*1*), in the case of a family which was undivided according to Hindu law, any co-sharer ceases to be disqualified under sub-section (*1*) of section 5 :

Provided, *firstly*, that

(*i*) where a Government ward dies or ceases to be disqualified and his property is still encumbered with debts and liabilities, the Court of Wards may, with the sanction of the [1][[2][State] Government] retain the said property under its superintendence until such debts and liabilities have been discharged ; and

(*ii*) in the case of land-holders [3][or pension-holders], [4][who are co-sharers in a family which is undivided according to Hindu law] where one or more of the proprietors of a property remain disqualified although another or others have ceased to be disqualified, the Cour of Wards may, with the sanction of the [1][[2][State] Government], retain the whole of the property under its superintendence, paying any proprietor who has ceased to be disqualified [5][from surplus income such portion as shall be proportionate to his interest in the estate] :

Provided, *secondly*, that, where the Court of Wards withdraws its superintendence, such withdrawal shall not affect any contract entered into by the Court of Wards in the lawful exercise of its powers ; and

Provided, *thirdly*, that

(*a*) no person who has once been declared disqualified under clause (*b*) or (*c*) of sub-section (*1*) of section 5, and

(*b*) except in the case of any co-sharer other than those signing an application described in section 9, sub-section (*2*), no land-holders [6][or pension-holder] who has been made a Government ward in pursuance of an order under section 9, sub-section (*1*),

shall be competent, on the withdrawal of such superintendence, to transfer or create any charge on or interest in his property or any part thereof for a period beyond the term of his natural life, except with the previous sanction of the Collector.

(*3*) No appeal shall lie from any opinion certified under sub-section (*2*).

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[1] The words " Provincial Government " were substituted for the words " Governor in Council " by the Adaptation of Indian Laws Order in Council.

[2] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

[3] These words were inserted by s. 4 (*2*) of the Bombay Court of Wards (Amendment) Act, 1913 (Bom. 2 of 1913).

[4] These words were substituted for the words, figures and brackets " referred to in section 8, sub-section (*2*) " by s. 2 and Sch. I, Part II, of the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910).

[5] These words were substituted for the words " the surplus income accruing from his share of the estate ", *ibid.*

[6] These words were inserted by s. 4 (*1*) of the Bombay Court of Wards (Amendment) Act, 1913 (Bom. 2 of 1913).

Appointment of guardian in certain cases.

41. (*1*) Where, in exercise of the power conferred by section 40, the Court of Wards decides to withdraw its superintendence from the person or property, or both, of any minor, it shall, before such withdrawal, by an order in writing, appoint some person to be guardian of the person or property, or both, of the minor, and such appointment shall take effect from the date of such withdrawal.

(*2*) In appointing a guardian under this section, the Court of Wards shall be guided by the provisions of the [1]Guardians and Wards Act, 1890; and every guardian so appointed shall have, and be subject to, the same rights, duties and liabilities as if he had been appointed under that Act. VIII of 1890.

Withdrawal to be notified in *Official Gazette*.

42. Where the Court of Wards withdraws its superintendence from any person or property under this Act, the fact of such withdrawal shall be notified in the [2][*Official Gazette*] and in such other manner as the [3][[4][State] Government] may, by general or special order, direct.

Appeals.

43. (*1*) An appeal shall lie from every order, other than an order of the District Court, passed under this Act, whether original or on appeal,

(*a*) where the order is that of a [5][Collector], or of any special or other officer appointed or Board constituted, under the proviso to section 3, to the [3][[4][State] Government];

[6]* * * * * *

(*c*) in all other cases, to the Collector:

[7][Provided that where any such officer or Board has been appointed to be Court of Wards and the order has been passed by any officer subordinate to such Court of Wards for the purposes of this Act, the [3][[4][State] Government] may direct that appeals shall lie to such officer or Board.]

(*2*) The provisions of sections 205 to 210, both inclusive, of the [8]Bombay Land Revenue Code, 1879, shall apply to all such appeals. Bom. V of 1879.

Control of Provincial Government.

44. All orders or proceedings under this Act, other than orders or proceedings of the District Court, shall be subject to the supervision and control of the [3][[4][State] Government]; and the [3][[4][State] Government] may, if [9][it] thinks fit, revise, modify, or reverse any such order or proceeding, whether an appeal is presented against any such order or proceeding or not.

Power to compel attendance of witnesses.

[10][**44A.** For the purposes of this Act, the Court of Wards may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.]

Bar of suits

45. No suit shall be brought in any Civil Court in respect of the exercise of any discretion conferred by this Act, or against the Court of Wards or any public servant or person duly appointed or authorized under this Act in respect of anything in

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[1] Central Acts.

[2] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*" by the Adaptation of Indian Laws Order in Council.

[3] The words "Provincial Government" were substituted for the words "Governor in Council", *ibid.*

[4] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

[5] This word was substituted for the word "Commissioner" by Bom. 28 of 1950, Sch.

[6] Clause (*b*) was deleted, *ibid.*

[7] This proviso was added by s. 8 of the Bombay Court of Wards (Amendment) Act, 1913 (Bom. 2 of 1913).

[8] *See supra.*

[9] The word "it" was substituted for the word "he" by the Adaptation of Indian Laws Order in Council.

[10] This section was inserted by s. 9 of the Bombay Court of Wards (Amendment) Act, 1913 (Bom. 2 of 1913).

good faith done or purporting to be done under the provisions thereof or the rules made thereunder :

Provided, *firstly*, that any person evicted under section 28 may sue for restitution ; and

Provided, *secondly*, that any tenant from whom an arrear of rent has been recovered under section 29 may sue for recovery of the amount, or any part thereof, so recovered.

Power of [2][State] Government to make rules.

46. (*1*) The [1][[2][State] Government] may, by notification published in the [3] *Official Gazette*], make rules to carry out the purposes and objects of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may

(*a*) prescribe the matters to which regard should be had in appointing or removing guardians and managers, and in fixing their remuneration ;

(*b*) regulate the form, conditions and amount of security, and the number of sureties (if any), to be given by managers ;

(*c*) prescribe the cases in which proposals or arrangements connected with the administration of the properties of Government wards shall be reported for the sanction of the [1][[2][State] Government] ;

(*d*) prescribe the accounts and other returns, and the form and other particulars thereof, which shall be rendered to the Court of Wards and by the Court of Wards to the [1][[2][State] Government] ;

(*e*) regulate the custody of securities and title-deeds belonging to the estate or property of a Government ward ;

(*f*) regulate the procedure in inquiries by, and in appeals from orders of the Court of Wards ;

(*g*) prescribe the mode in which powers delegated to managers are to be notified for the information of persons concerned ;

(*h*) prescribe the mode in which any expenses incurred by the Court of Wards or the Collector under any power conferred by this Act may be recovered ; and

(*i*) generally prescribe the manner in which the powers and duties of the Court of Wards under this Act shall be exercised and performed.

Application of Act to estates of Rulers of Indian States.

[4][**47.** The powers and functions conferred on the State Government by or under this Act shall, in relation to the estates of Rulers of Indian States, be powers and functions of the Central Government.]

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[1] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

[2] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

[3] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", by the Adaptation of Indian Laws Order in Council.

[4] Section 47 was inserted by the Adaptation of Laws Order, 1950.

(*3*) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose. Suits to be filed within six months.

(*4*) The cause of action shall be deemed to have arisen on the date on which the [1][impediment to the natural flow of surface water or the] dispossession, deprivation or determination, of tenancy or other right occurred, or on which the [2][impediment,] disturbance or obstruction, or the attempted [3][impediment or] disturbance or obstruction, first commenced. Cause of action.

Explanation.—The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section.

Illustration I.

A lets *B* his field to cultivate for a specific period of one or more years. *B* refuses to resign possession after the expiration of that period. *A* can sue for possession in the Mamlatdar's Court at any time within 6 months from the date of the expiration of the said period, unless *B* is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Illustration II.

B is a yearly tenant of *A*, who gives him a notice to vacate, as he is bound to do under section 84 of the Bombay Land Revenue Code, 1879, at least three months before the end of the then current year of tenancy. At the commencement of the next year *B* refuses to vacate. *A* can sue *B* in the Mamlatdar's Court at any time within six months from the commencement of that year, unless *B* is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Bom. V of 1879.

Illustration III.

A allows *B* the use of water from his well, or from his water-course, for a specific period, at the expiration of which *B* continues to take water from the well or water-course without *A*'s consent. *A* may sue *B* in the Mamlatdar's Court at any time within six months from the expiration of the said period to obtain an injunction to stop *B* from taking the water, unless *B* is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the use of the water, or who is the legal representative of such former owner or part-owner.

Illustration IV.

A and *B* hold lands adjacent to a पाट or फांस, or similar artificial water-course which has hitherto been exclusively used by *B*. *A* draws water therefrom. *B* may sue in the Mamlatdar's Court, at any time within six months from the date on which *A* commences to take the water, for an injunction to prevent *A* from so doing.

6. The Collector may, after due notice to the parties, by order in writing transfer any suit from any Mamlatdar's Court in his district to any other Mamlatdar's Court in his district, and the Mamlatdar's Court to which the suit is so transferred shall thereupon exercise jurisdiction in such suit ; but any order issued to village-officers under section 21 shall be issued by the Mamlatdar to whom such village-officers are subordinate. Power of Collector to transfer suits.

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[1] These words were inserted by Bom. 66 of 1954, s. 2 (*3*) (*a*).
[2] This word was inserted *ibid.*, s. 2 (*3*) (*b*).
[3] These words were inserted, *ibid.*, s. 2 (*3*) (*c*).

Suits commenced by plaint. Contents of plaint.

7. All suits under this Act shall be commenced by a plaint, which shall be presented to the Mamlatdar in open Court by the plaintiff, and which shall contain the following particulars :—

(*a*) the name, age, religion, caste, profession and place of abode of the plaintiff ;

(*b*) the name, age, religion, caste, profession and place of abode of the defendant ;

[(*bb*) the nature and situation of the impediment erected and the situation of the lands which are adjacent to each other, and the nature of the relief sought ;]

(*c*) the nature and situation of the property of which possession or use is sought, or the nature of the injunction to be granted, as the case may be ;

(*d*) the date on which the cause of action arose ;

(*e*) the circumstances out of which the cause of action arose ; and

(*f*) a list of the plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be fixed under section 14.

Informal petitions to be treated as plaints.

8. Where a petition not in the form of a plaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7.

Examination of plaintiff on oath.

9. Where the plaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall thereupon be deemed to be part of the plaint. Where the plaintiff requires time to obtain any of the particulars specified in section 7, the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

Plaint to be subscribed and verified.

10. When the plaint is presented, and has, if necessary, been treated in the manner specified in section 9, the Mamlatdar shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court, in the manner following, or to the like effect :—

"I, *A. B.*, the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

Endorsement by Mamlatdar.

11. (*1*) The Mamlatdar shall endorse the plaint to the effect that it was duly subscribed and verified.

Procedure where plaintiff cannot write.

(*2*) Where the plaintiff cannot write, the verification may be written for him in open Court and he shall affix his mark to his name in token of the authenticity of the verification, and the Mamlatdar shall, in such case, record that the verification was made in his presence at the request of the plaintiff, and that his mark was so affixed.

Rejection of plaint.

12. The Mamlatdar shall reject the plaint—

(*a*) where the plaintiff declines to make a statement on oath under section 9 ; or

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[1] This clause was inserted by Bom. 66 of 1954, s. 3.

(*b*) where the plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or altogether ; or

(*c*) where it appears upon the face of the plaint,

(*i*) that the property or use claimed is not one of the kind specified in section 5, or

(*ii*) that the cause of action arose more than six months before the plaint was presented ; or

(*d*) where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11.

Return of plaint.

13. Where it appears to the Mamlatdar that the subject of the plaint is not within his jurisdiction, he shall return the plaint to be presented in the proper Court.

Procedure where plaint admissible.

14. (*1*) Where a plaint is admissible, the Mamlatdar shall receive and file it. He shall then fix a convenient day and place for the trial of the case, and shall issue, at the expense of the plaintiff, notice in the form of Schedule A to the defendant. He shall then require the plaintiff to appear with his documents, if any, and witnesses, if any, on the day and at the place fixed

(*2*) The date to be fixed for the trial of the case shall not be earlier than ten days, nor later than fifteen days, from the day on which the notice is issued, except for sufficient reason to be recorded in writing by the Mamlatdar with his own hand.

(*3*) The place to be fixed for the trial of the case may be in the Mamlatdar's office, or at or near the scene of dispute, or at any other spot that the Mamlatdar considers convenient to the parties.

Attendance of witnesses.

15. (*1*) Where either party requires any witness to be summoned to appear on the day and at the place fixed, the Mamlatdar shall issue a summons for that purpose.

(*2*) The Mamlatdar may issue, after recording his reasons in writing, a warrant for the arrrest of any such witness if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

(*3*) The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be in force in regard to the attendance of witnesses in Subordinate Civil Courts.

Where plaintiff makes default, plaint to be rejected with costs.

16. (*1*) Where the plaintiff fails to attend, or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the plaint with costs, whether the defendant appears or not, unless the defendant admits the claim.

Where defendant does not appear, case to be heard *exparte*.

(*2*) Where the plaintiff attends as required by section 14, sub-section (*1*), but the defendant fails to attend, and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the defendant and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the plaint *ex parte* :

But case may be reheard on sufficient cause being shown.

Provided, *firstly*, that if either party satisfies the Mamlatdar at any time within thirty days from the date of the rejection of a plaint under sub-section (*1*), or of an *ex parte* decision under sub-section (*2*), that he was prevented by some unavoidable circumstance from attending, or from producing his documents or from

adopting measures to procure the attendance of his witnesses, as the case may be, it shall be lawful for the Mamlatdar to issue a notice in the form of Schedule B at the expense of the applicant to the opposite party and, if still satisfied after hearing the opposite party that the applicant was prevented as alleged, to re-hear the case at such time and place as he may then fix :

or plaintiff may withdraw his suit.

Provided, *secondly*, that nothing in the foregoing provisions shall prevent the plaintiff from withdrawing his suit on payment of the defendant's costs.

When proceedings may be adjourned.

17. (*1*) Where, in the case mentioned in sub-section (*2*) of section 16, the Mamlatdar is not satisfied from the evidence before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under section 14, sub-section (*1*), to the defendant.

(*2*) Where any witness who has been duly summoned, or for whose arrest a warrant has been issued under sub-section (*2*) of section 15, fails to attend on the day and at the place fixed, the Mamlatdar may, if he considers there is sufficient reason, after taking the evidence of those present, adjourn the hearing of the suit from time to time till the attendance of such witness can be enforced.

(*3*) The Mamlatdar may, for any other sufficient reason to be recorded in writing, adjourn the trial of the case for such time as he thinks fit, but not ordinarily exceeding ten days.

(*4*) The provisions of sections 15 and 16 shall apply in respect of any day to which the trial of the case may be adjourned under this section, as if such day were the day originally fixed for the trial.

Minor may be a party.

18. (*1*) A minor may sue or be sued, if he is represented by a natural or duly appointed guardian.

Power to add parties.

(*2*) The Mamlatdar may, at any stage of the proceedings, order that the name of any person to whom possession or enjoyment of the property or use claimed, or of any part thereof, may have been transferred, or the addition of whom as a party appears necessary in order to enable the Court effectually and completely to adjudicate upon the issues, be added as a plaintiff or defendant, as the circumstances of the case may require :

Provided that no person shall be added as a plaintiff without his consent :

Provided also that in respect of any person so added, not being a transferee pending the suit, the suit shall for the purposes of section 5, sub-section (*3*), be deemed to have been instituted on the day when his name was so added.

Procedure in case of death of party.

(*3*) In case of the death of any party while the suit is pending,

(*i*) if application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and shall enter on the record the name of such representative ;

(*ii*) if no such application is made, the suit shall abate.

(*4*) Where the Mamlatdar orders the name of any person to be added as a defendant or enters on the record the name of any person as the legal representative of a deceased defendant, the Mamlatdar shall issue to such person a notice as provided in section 14 ; and the trial shall proceed on the date fixed in such notice.

Points to be decided by Mamlatdar at hearing.

19. (*1*) On the day fixed, or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to the provisions of section 16, proceed to hear all the evidence that is then and there before him, [1][and to try the following issues, namely :—

(*aa*) If the plaintiff avers that the natural flow of surface water from his land has been impeded by any erection raised by the defendant causing damage or likelihood of damage to the plaintiff's land or to any grazing, trees or crops thereon—

(*1*) whether surface water flowed, in a defined channel or otherwise, naturally from plaintiff's land on to defendant's land ;

(*2*) whether the defendant erected any impediment to such flow, otherwise than under due authority of law ;

(*3*) whether such erection impeded such natural flow of water within six months before the suit was filed ;

(*4*) whether such impediment has caused or is likely to cause damage to plaintiff's land or to any grazing, trees or crops thereon ;]

(*a*) If the plaintiff avers that he has been unlawfully dispossessed of any property or deprived of any use—

(*1*) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed ;

(*2*) whether the defendant is in possession at the time of the suit, and, if so, whether he obtained possession otherwise than by due course of law ;

(*b*) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof—

(*1*) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims ;

(*2*) whether such right has determined at any time within six months before the suit was filed ;

(*3*) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part-owner ;

(*c*) if the plaintiff avers that he is still in possession of the property or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use—

(*1*) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed ;

(*2*) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment ;

(*3*) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed.

Power of Mamlatdar to examine other witnesses and inspect property in dispute.

(*2*) The Mamlatdar may, after due notice to, and in the presence of, the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to, the parties.

[1] These words, brackets, letters, figures and punctuation marks were substituted for the original by Bom. 66 of 1954, s. 4.

[1][He shall without unnecessary delay record a memorandum after hearing the parties on the spot, if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.]

Record of proceedings by Mamlatdar.

(*3*) The Mamlatdar shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

Orders to be passed by Mamlatdar upon decisions in favour of plaintiff and defendant.

(*4*) Where the Mamlatdar's finding upon the issues is in favour of the plaintiff, he shall make such order, not being in excess of the powers vested in him by section 5, as the circumstances of the case appear to him to require ; and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit, including the costs of execution, shall follow the decision.

Mamlatdar's order to be endorsed on plaint and read out in open Court.

20. Every order of the Mamlatdar, whether for rejecting or returning a plaint or whether for allowing or disallowing a claim, shall be endorsed by the Mamlatdar on the plaint and shall be read out by him in open Court, either at once or on some future day of which due notice shall be given to the parties or their pleaders, and brief reasons for the order shall be placed by him on record.

Mamlatdar's decision how executed.

21. (*1*) Where the Mamlatdar's decision is for [2][removal of an impediment or for] awarding possession or restoring a use, he shall give effect thereto by issuing such orders to the village-officers, or to any subordinate under his control or otherwise, as he thinks fit :

Proviso as to growing crops.

Provided that, notwithstanding anything contained in this Act, where at the time when a decision is recorded by the Mamlatdar for [3][removal of the impediment erected on any land or for] awarding possession of any land, there is a crop on such land which has been sown by, or at the expense of, the defendant, and the Mamlatdar is satisfied that it has been so sown in good faith, the Mamlatdar may, and if the defendant makes an application for the purpose and furnishes sufficient security, or deposits in Court a sufficient sum, for the payment of the costs of the suit, shall pass an order staying delivery of possession of such land to the plaintiff seeking possession thereof, either—

(*a*) until the plaintiff agrees to take the crop at a valuation, to be made under the orders of the Mamlatdar, according to the value of the crop at such time, including any instalments of the Government assessment which the defendant may have paid for the current year ; or

(*b*) where the plaintiff is unwilling to take the crop at such valuation until after the expiration of sufficient time for the crop to be gathered by the defendant.

The amount of any valuation made under clause (*a*) of the proviso to this sub-section shall be paid to the defendant through the Mamlatdar, and shall be recoverable from the plaintiff as an arrear of land-revenue.

Mode of serving injunction.

(*2*) Where the Mamlatdar's decison is for granting an injunction, he shall cause the same to be [4][prepared in the form of Schedule BB or C, as the case may be,] and shall deliver or tender the same then and there to the defendant, if present, or if the defendant is not present, shall send it to the village-officers, or to any subordinate under his control, to be served upon the defendant.

Recovery of costs awarded.

(*3*) Where the Mamlatdar awards costs, such costs, together with the costs of execution, shall be recoverable from the party ordered to pay them as an arrear of land-revenue.

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[1] These words were added by Bom. 11 of 1928, s. 2, First Schedule.
[2] These words were inserted by Bom. 66 of 1954, s. 5 (*1*) (*a*).
[3] These words were inserted *ibid*, s. 5 (*1*) (*b*).
[4] These words and letters were substituted for the original, *ibid*, s 5. (*2*).

XLV of 1860. (*4*) Any person disobeying an injunction granted under sub-section (*2*) shall be punishable under section 188 of the [1]Indian Penal Code. Disobedience to an injunction how punishable

22. [2][Subject to the provisions of section 23, sub-section (*2*), the party in favour of whom the Mamlatdar issues an order for removal of an impediment or the party to whom the Mamlatdar gives possession or restores a use, or in whoser favour an injunction is granted, shall continue to have the surface water upon his land flow unimpeded on to adjacent land or continue in possession or use, as the case may be, until otherwise decreed or ordered, or until ousted, by a competent Civil Court]: Possession to be given without prejudice to rights of parties.

Provided, *firstly*, that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed from recovering by a suit in a competent Civil Court mesne profits for the time he has been kept out of possession of any property, or out of enjoyment of any use :

Provided, *secondly*, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them the Mamlatdar's decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (*1*) of section 21, shall not be held to be conclusive.

23. (*1*) There shall be no appeal from any order passed by a Mamlatdar under this Act. Bar of appeal.

(*2*) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit. Collector's power to revise Mamlatdar's proceedings.

[3][(*2A*) The Collector may delegate the powers conferred on him by this section to any Assistant Collector or Deputy Collector subordinate to him] ; Delegation to Collector's powers.

(*3*) Where the Collector, [4][Assistant Collector or Deputy Collector] takes any proceedings under this Act he shall be deemed to be a Court under this Act. Collector deemed to be a Court.

24. [*Powers of the Court of the Judicial Commissioner of Sind.*] *Omitted by the Adaptation of Laws Order, 1950.*

25. Any plaintiff subscribing and verifying any plaint under this Act which he either knows or believes to be false, or does not believe to be true, in any material point, shall be deemed to have committed an offence punishable under section 193 of the [1]Indian Penal Code. Punishment for verification of false plaint.

XLV of 1860.

26. No suit shall lie under this Act—

(*a*) [5][against Government or against any Government officer] in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force ; or Bar of certain suits.

(*b*) in respect of [6][any removal of any impediment or of] any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898.

V of 1898.

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[1] Central Acts.
[2] This portion was substituted for the original by Bom. 66 of 1954, s. 6.
[3] This sub-section was inserted by Bom. 24 of 1942, s. 2 (*a*) read with Bom. 42 of 1947, s. 2.
[4] These words were inserted, *ibid*, s. 2 (*b*).
[5] These words were substituted for the words " against the Crown or against any servant of the Crown " by the Adaptation of Laws Order, 1950.
[6] These words were inserted by Bom. 66 of 1954, s. 7.

SCHEDULE A.

FORM OF NOTICE TO BE ISSUED TO THE DEFENDANT UNDER SECTION 14.

Seal of the Court.

No. OF SUIT.

In the Court of the Mamlatdar of

Plaintiff.
Defendant.

To DEFENDANT—(*name, age, religion, caste, profession and place of abode*).

WHEREAS (*here enter the name, age, religion, caste, profession and place of abode of the plaintiff*) has instituted a suit in this Court against you (*here state the particulars of the plaint*) :

You are hereby summoned to appear in this Court at the village of in person or by duly authorized agent on the day of at o'clock *m.*, to answer the above-named plaintiff ; and, as the plaint will be finally disposed of on that day, you must adopt measures to produce your documents and procure the attendance of your witnesses at the hour and place above fixed ; and you are hereby required to take notice that, in default of such appearance at the before mentioned time and place, the suit will be heard and determined in the absence of yourself and your agent.

Dated this day of 19

(*Signed*)
Mamlatdar.

Note.—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within mentioned date.

SCHEDULE B.

FORM OF NOTICE TO BE ISSUED UNDER SECTION 16.

Seal of the Court.

No. OF SUIT.

In the Court of the Mamlatdar of

Plaintiff.
Defendant.

To PLAINTIFF (*or* DEFENDANT, *as the case may be*).

WHEREAS, in the suit above specified, instituted in this Court by the Court ordered on the day of last that , and the said plaintiff (*or* defendant, *as the case may be*), has

under date the day of , applied to this Court to re-hear the case on the grounds that (*here state the grounds*) :

This is to give you notice that the said application will be heard and determined on the day of at o'clock *m.*, at the village of , and you are hereby required to take notice that in default of your appearance personally or by agent at the said time and place, the application will be heard and determined in your absence and, if granted, a time and place for re-hearing the suit will then be fixed.

Dated this day of 19 .

(*Signed*)
Mamlatdar.

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[1][SCHEDULE BB.

FORM OF INJUNCTION TO BE ISSUED UNDER SECTION 21, SUB-SECTION (2).

Seal of the Court.

No. of Suit.

IN THE COURT OF THE MAMLATDAR OF

... Plaintiff ;
... Defendant.

To DEFENDANT

Whereas in the suit above specified, the Court has this day found that you have impeded (or that you have attempted to impede) the natural flow of surface water naturally rising in or falling on the plaintiff's undermentioned property by (here describe the property and the impediment erected, or attempted to be erected, found proved) ;

You are hereby prohibited from erecting or attempting to erect any impediment (if necessary set forth the particular kind of impediment which the defendant is enjoined not to erect) to the natural flow of surface water from the said plaintiff's said property on to your property otherwise than under authority of a competent Civil Court.

Dated this day of

(*Signed*)
Mamlatdar.]

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[1] Schedule BB was inserted by Bom. 66 of 1954, s. 8.

SCHEDULE C.

FORM OF INJUNCTION TO BE ISSUED UNDER SECTION 21, SUB-SECTION (2)

Seal of the Court.

No. OF SUIT.

In the Court of the Mamlatdar of

Plaintiff.
Defendant.

TO DEFENDANT

WHEREAS in the suit above specified the Court has this day found that you have disturbed or obstructed (or that you have attempted to disturb or obstruct) the said plaintiff in his possession of the under-mentioned property (*or* enjoyment of the under-mentioned use of water *or* use of roads, *or otherwise as the case may be*) by (*here describe the disturbance or obstruction or attempted disturbance or obstruction found proved*) :

You are hereby prohibited from making any further attempt to disturb or obstruct (*if necessary set forth the particular kind of disturbance or obstruction which the defendant is enjoined not to repeat*) the said plaintiff in his possession of the said property (*or otherwise as the case may be*) otherwise than in execution of the decree of a competent Civil Court.

Dated this day of 19 .

(*Signed*)
Mamlatdar.